

# **HOW TO SET YOUR CASE FOR TRIAL**

## CHECKLIST

**Use the forms and instructions in this packet only if the following factors apply to your situation:**

- ☒ A petition/complaint and a response/answer were filed with the court in this case; and,
- ☒ You and the other party do not agree and will not sign agreement papers; and,
- ☒ You know about mediation and do not want to have a mediator help you resolve this matter. (If you have questions about mediation, see the Self-Help Center packet, *Conciliation Court: Asking for Counseling or Mediation Services*.)
- ☒ You have talked to a lawyer, and the lawyer has told you that you are ready to set your case for trial, and you have done everything you need to do to get your case ready for trial.
- ☒ You want to see a judge and have a trial in this case.

**READ ME:** It is very important for you to know that when you sign a court document, you may be helping or hurting your court case. Before you sign any court document or get involved with a court case, it is important that you see a lawyer to make sure you are doing the right thing. The Self-Help Center has a list of lawyers who can give you legal advice and help you on a task-by-task basis for a fee.

## INSTRUCTIONS: HOW TO FILL OUT THE WITNESS AND EXHIBIT LIST

Read all forms and instructions before starting. Fill out forms by printing in blue ink or typing.

**USE THIS FORM ONLY** if a petition/complaint **and** an answer/response have been filed in your case. By filing a Witness and Exhibit List, you are telling the Court that you want a trial and you want to tell the Court and the other party who your witnesses are and what exhibits you will use at the trial. Here are the instructions and a step-by-step guide to filling out the *Witness and Exhibit List* in this packet.

### STEP 1: CHOOSING YOUR WITNESSES AND EXHIBITS

If you intend to use a witness or exhibit at trial, you must be prepared to tell the judge why the witness's testimony or the exhibit is important to your case.

**Witnesses:** You should think in terms of what you want to say to the judge and what witnesses will help you tell your story to the judge. Witnesses are people who will help tell your story to the judge. Generally, they should be people who can talk to the judge under oath about things they have seen or know directly, not things they have heard about from you or someone else.

**Exhibits:** An exhibit can be any object, paper, photograph, receipt, letter, or document that tells the judge something relevant to your case. Be sure that when you make your list it is clear to the other party and the judge who or what specifically you are referring to.

#### Domestic Relations Cases Only:

- 1. Children as Witnesses:** Many people, especially those involved in custody disputes, want to put children on their list of witnesses. Judges generally will not allow children less than 18 years old to be called as a witness in court. Putting a child on the witness stand puts that child in a very awkward position of choosing between mom and dad. Keep this in mind when deciding what witnesses to list.
- 2. Common Witnesses and Exhibits:** The following are issues that may be relevant to your case and examples of witnesses or exhibits commonly used at trial. They are designed to give you ideas, not to tell you what you should or should not list. If you are confused or need help, see a lawyer for help. If an issue does not apply to you, skip over it.

**Custody:** If custody is in dispute, you will need to think about who can come to court who will best help you explain why it is in the best interest of the child to be with you. For example, you may want to call as a witness a teacher, day care worker, or close friend who can tell the judge how you are caring for the child's physical, emotional, or psychological needs. You may also want to have family members as witnesses, but remember that a professional or third party is generally more believable to a judge than a family member. Exhibits you may want to use may include report cards, school progress reports, reports of doctors or psychologists, and medical reports.

**Parenting Time:** If you are asking that the other party's visitation be supervised or restricted, you may want to bring evidence as to why you feel it is in the child's best interest. For example, if you have witnesses to domestic violence or have evidence such as medical or police reports, you should include them in your list.

**Child Support and Spousal Maintenance (Alimony):** You will be required to fill out several documents relating to child support, most commonly an Affidavit of Financial Information and a

Parent's Worksheet. However, in order to prove earnings by yourself or the other party, you may want to list as evidence sole or joint tax returns, W2s, or other earning information. You may want to list witnesses regarding specific work skills or experience by the other party if you do not have evidence on these issues. You should list as evidence day care or medical expenses being paid on behalf of the children so that the correct amount of child support can be ordered.

**Property and Debts:** If there is property and debt to be divided, you should include financial information on your list. For example, you should list credit card bills, mortgage information, personal loans, bank statements including checking or savings balances, or any other documents that directly relate to your finances.

## **STEP 2: FILLING OUT THE WITNESS AND EXHIBIT LIST:**

- A. Make sure your form is titled *Witness and Exhibit List*.
- B. In the top left corner of the first page fill out the following: Your Name; Address; City, State, and Zip Code; Telephone Number; and ATLAS Number if you are receiving or have received AFDC from the Arizona Department of Economic Security.
- C. Fill in YOUR name in the space that says "Name of Petitioner/Plaintiff" if you filed the original action. If the other party filed the original action, they will be the Petitioner/Plaintiff. In the space that says "Name of Respondent/Defendant", fill in the name of the Respondent/Defendant that has been used throughout your case. Whoever was the Respondent/Defendant for the original action will be the Respondent/Defendant for any other papers related to this case.
- D. Fill in your case number where it says "Case Number". Your case number stays the same any time you file any papers in your case. Then fill in the name of the judge assigned to your case. If you do not know the name of the judge assigned to your case, call the Clerk of Court at 928-779-6535.
- E. INFORMATION ABOUT ME: Put an "X" in the box in front of the Petitioner/Plaintiff or the Respondent/Defendant.
- F. MY LIST OF WITNESSES: A good way to approach writing your witness and exhibit list is to think about your case. What will be important to the judge? What do I want to prove? Who is most familiar with the issues in my case? What things help prove the things I want the judge to understand? Once you have decided who you **may** call as a witness, list his or her name and address, and give a brief description of what he or she will tell the judge. Use additional paper if you need to. Once you have decided which exhibits you may use at your trial, describe all the exhibits in detail for the court.
- G. TODAY'S DATE: Where the form has "Today's Date", print or type the day of the month and year you signed the list in the space provided. Then sign your name.
- H. I PROMISE THAT I DID THE FOLLOWING THINGS: Print or type the day of the month, the month, and the year you did each of these things. Then sign your name to tell the Court that you gave/mailed the papers to these people.

**STEP 3:** After you have filled out the Witness and Exhibit List, read *Procedures: What to Do with the Witness and Exhibit List Now That You Have Filled it Out* in this packet. This will tell you what you need to do next.

## **PROCEDURES: WHAT TO DO WITH THE WITNESS AND EXHIBIT LIST NOW THAT YOU HAVE FILLED IT OUT**

**USE THESE PROCEDURES ONLY** if you have filled out the Witness and Exhibit List and you want a trial to be set in your case. Here are the steps you need to take:

### **STEP 1: COMPLETE THE WITNESS AND EXHIBIT LIST**

Make sure that the Witness and Exhibit List has been completely filled out. Be sure to sign and date it before you make the copies, even though you have not actually done the things you promised to do on the last page.

### **STEP 2: COPIES**

Make **3 copies** of the Witness and Exhibit List and follow these instructions:

**ORIGINAL WITNESS AND EXHIBIT LIST:** File the original Witness and Exhibit List with the Clerk of the Court where you filed your case.

**COPY 1:** Mail one copy to the other party or his or her attorney. If the other party is represented by an attorney, make sure you mail a copy to the attorney. If the other party is not represented by an attorney, make sure you mail a copy to the other party.

**COPY 2:** Give one copy to the Clerk of Court for the judge when you file. Court staff will deliver this copy to the judge.

**COPY 3:** When you file the original with the Clerk of the Court, ask the Clerk to stamp this copy for you. This is called a conformed copy. It is proof that the original was filed. Keep this copy for your records.

### **STEP 3: FILE A MOTION TO SET THE CASE FOR TRIAL**

If you file your Witness and Exhibit List before the other party files his or her Witness and Exhibit List, you must wait 25 calendar days after it has been mailed to the other party or his or her attorney. Once the 25 calendar days have passed, you must file a court form called a Motion to Set (one has been included in your materials) within the next 10 days. If you filed your Witness and Exhibit List after the other party, you should file a Motion to Set within 10 calendar days of filing your Witness and Exhibit List.

## INSTRUCTIONS: HOW TO FILL OUT THE MOTION TO SET

**USE THIS FORM ONLY** if there has been a petition/complaint **and** an answer/response filed in your case. By filing a Motion to Set, you are telling the court that you want to go forward with the trial. You can only use a Motion to Set if you already have filed a Witness and Exhibit List. If you were the first one to file a Witness and Exhibit List, you must wait at least 25 days after you mailed your list to the other party before filing this motion. Once the 25 days have passed after you mailed the list, the motion to set must be filed within 10 calendar days. If you do not file the Motion to Set within 10 days, you will have to file a new Witness and Exhibit List before filing a Motion to Set. If the other party files his or her Witness and Exhibit List before you, you must file your list within 20 calendar days after receiving the list from the other party, and then file your Motion to Set within 10 calendar days after you file your Witness and Exhibit List. Here are the steps to help you fill out the Motion to Set

### **STEP 1: FILL OUT THE MOTION TO SET.**

(Use this form **ONLY** if you have already filed a Witness and Exhibit List, you and the other party disagree, and you want the judge to set a trial date.)

- A.** Make sure your form is titled Motion to Set and Certificate of Readiness. **Type or print using black ink only!**
- B.** In the top left corner of the first page fill out the following: Your Name; Address; City, State and Zip Code; Telephone Number; and your ATLAS Number, if you are receiving or have received TANF (formerly AFDC) from the Arizona Department of Economic Security.
- C.** Fill in your name in the space that says "Name of Petitioner/Plaintiff" if you filed the original case. If the other party filed the original case, he or she will be the Petitioner/Plaintiff. In the space that says "Name of Respondent/Defendant," fill in the name of the Respondent/Defendant throughout your case. Whoever was the Respondent/Defendant for the first filing of the original case will be the Respondent/Defendant for any other papers filed in this case.
- D.** Fill in your case number where it says "Case Number \_\_\_\_". Your case number stays the same any time you file any papers in your case. Then fill in the name of the judge assigned to your case. If you do not know the name of the judge assigned to your case, call the Clerk of Court at (520) 779-6535.
- E. INFORMATION ABOUT ME.** Put an X in the box in front of the Petitioner/Plaintiff or the Respondent/Defendant to tell the court who you are.

**F. INFORMATION ABOUT MY CASE.**

1. **SET MY CASE FOR TRIAL.** Put an AX≡ in this box if you want the Court to set your case for trial.
2. **WE DO NOT AGREE.** Put an AX≡ in this box if a Petition or Complaint and a Response or Answer have been filed. This tells the court that there are still disagreements that make a Hearing or Trial necessary to settle the things you and the other party do not agree about.
3. **CIVIL CASE OR DOMESTIC RELATIONS CASE.** Put an AX≡ in the Civil Case box if the statement is true and your case is a civil case. Put an AX≡ in the Domestic Relations Case box if the statement is true and your case is a domestic relations case. If you have questions about discovery, you should ask a lawyer for help.
4. **WITNESS AND EXHIBIT LIST.** Put an AX≡ in this box if the statement is true. This tells the Court that you have filed a Witness and Exhibit List and you gave a copy of your list to the other party.
5. **INFORMATION ABOUT YOU OR YOUR LAWYER.** If you are represented by an attorney, put his or her name, address, city, state, zip code, and telephone number. If you are not represented by an attorney, write in your name, address, city, state, zip code, and telephone number.
6. **INFORMATION ABOUT THE OTHER PARTY.** If the other party is represented by an attorney, put the attorney=s name, address, city, state, zip code, and telephone number. If the other party is not represented by an attorney, write in the other party=s name, address, city, state, zip code, and telephone number.
7. **PREFERENCE FOR TRIAL.** Put an AX≡ in the box that tells the court whether your case is entitled to be heard before other cases. If your case is a divorce, paternity, and/or custody case, your case is given special preference by the court. Put an "X" in the box that says Athis case is entitled to be heard before other cases,≡ and check the box in front of Domestic Relations case. If you do not know whether your case is entitled to preference, see a lawyer for help.
8. **SHORT CASE.** Some cases can be heard in an hour or less. If a lawyer has told you that your case can be heard in less than an hour, check the Ayes≡ box; otherwise, check the Ano≡ box. If you are Anot sure,≡ check the Anot sure≡ box.

9. **ESTIMATED TIME FOR TRIAL.** Put in how long you think the trial will take. Generally, for most divorce, paternity or custody trials, you should request "2 Day." If you will be having a lot of witnesses, experts, and there is an attorney on the other side, you may want to request "1 Day." On the other hand, if there are no witnesses other than you and the other party and you don't have a lot to tell the Judge, you should ask for "2 Hours." The Court will decide how long to set the trial for. If the trial takes longer than the time allowed, the Judge can continue the trial to another date and time.
10. **CIVIL CASES ONLY. JURY TRIAL.** If your case is a civil case and you want a jury trial, check the Ayes box, otherwise check the Ano box. Jury trials are not allowed in domestic relations cases. You are not required to fill this section out.
11. **CIVIL CASES ONLY. ARBITRATION.** Write in AN/A for not applicable if your case is a Domestic Relations case. If your case is a Civil case, write in the amount of money/damages you and the other party are fighting about. If you and the other party are fighting about less than \$50,000, then your case is subject to Arbitration and you should check the Ayes box; otherwise, check the Ano box.
12. **TODAY=S DATE.** Print or type in black ink the day of the month, the month and the year you signed the motion in the space provided. Sign your name on the line provided.
13. **I PROMISE UNDER OATH THAT I DID THE FOLLOWING THINGS:** Print or type the day of the month, the month, and the year you did each of these things. Then sign your name to tell the Court that you gave/mailed the papers to these people.

**STEP 2** After you have filled out the motion, read *Procedures: What to Do with the Motion to Set Now That You Have Filled it Out* in this packet.



## **PROCEDURES: WHAT TO DO WITH THE MOTION TO SET NOW THAT YOU HAVE FILLED IT OUT**

**USE THIS FORM ONLY** if you have filled out the Motion to Set for Trial and Order and you want a trial to be set in your case. Here are the steps you need to take:

### **STEP 1: COMPLETE THE COURT FORM CALLED A MOTION TO SET FOR TRIAL AND ORDER.**

Make sure that the Motion to Set has been completely filled out using a typewriter or black ink. Be sure to sign and date it before you make the copies, even though you have not actually done the things you promised to do on the last page of the Motion to Set.

Then follow these time frames to find out when you should file your Motion to Set. If you filed your Witness and Exhibit List before the other party files his or her Witness and Exhibit List, you must wait 25 calendar days after it has been mailed to the other party or his or her attorney. Once the 25 calendar days have passed, you must file the Motion to Set within the next 10 calendar days. If you filed your Witness and exhibit List after the other party, you should file a Motion to Set within 10 calendar days of filing your Witness and Exhibit List. If you forget to file the Motion to Set within the 10-day period and the other party did not file a Motion to Set, you will have to file a Notice of Refiling Witness and Exhibit List, and wait another 25 days--SO DON=T FORGET.

### **STEP 2: COPIES.**

Make **5 copies** of the Motion to Set and follow these instructions:

**ORIGINAL MOTION TO SET FOR TRIAL AND ORDER.** File the original Motion to Set for Trial and Order with the Clerk of the Court where you filed your case.

**COPY 1:** Give one copy to the Clerk of Court and asked that it be mailed to you once the date for trial has been filled in by the judge.

**COPY 2:** Give a second copy to the Clerk of Court and ask that it be mailed to the opposing party or his or her attorney once the date for trial has been filled in by the judge.

**COPY 3:** Give a third copy to the Clerk of Court for delivery to the judge.

**COPY 4:** When you file the Original with the Clerk of the Court, ask the Clerk of the Clerk to stamp this copy for you. This is called a Aconformed copy.≡ It is proof that the original was filed. Keep this copy for your records.

**COPY 5:** Mail one copy to the other party or his or her attorney. If the other party is represented by an attorney, make sure you mail a copy to the attorney. If the other party is not represented by an attorney, make sure you mail a copy to the other party.

**STEP 3: WAIT TO RECEIVE A NOTICE FROM THE COURT.**

Once you have filed the Motion to Set for Trial and Order, you should receive your Aconformed copy≡ from the court telling you the day and time of your Trial. The court may also set a pre-trial conference to discuss with you and the opposing parties issues that may arise during a later trial.

Your Name: \_\_\_\_\_  
Your Address: \_\_\_\_\_  
Your City, State, Zip Code: \_\_\_\_\_  
Your Telephone Number: \_\_\_\_\_  
ATLAS Number (if applicable): \_\_\_\_\_  
Attorney Bar Number (if applicable): \_\_\_\_\_

**SUPERIOR COURT OF ARIZONA, COUNTY OF COCONINO**

\_\_\_\_\_  
Name of Petitioner/Plaintiff

CASE NUMBER: \_\_\_\_\_

**WITNESS AND EXHIBIT LIST**

\_\_\_\_\_  
Name of Respondent/Defendant

Assigned to: \_\_\_\_\_  
Judge's Name

**INFORMATION ABOUT ME:** I am the [ ] Petitioner/Plaintiff or [ ] Respondent/Defendant.

**MY LIST OF WITNESSES:** Here is a list of the people I want to call as witnesses in my case to tell the judge what they know about my case.

1. Petitioner/Plaintiff.
2. Respondent/Defendant.
3. All witnesses listed by the other party(s).
4. Name of Witness: \_\_\_\_\_  
Address of Witness: \_\_\_\_\_  
Description of what this person will tell the judge: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Name of Witness: \_\_\_\_\_  
Address of Witness: \_\_\_\_\_  
Description of what this person will tell the judge: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Name of Witness: \_\_\_\_\_  
Address of Witness: \_\_\_\_\_

Description of what this person will tell the judge: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

7. I reserve the right to add to my list of witnesses if I learn about a witness that I did not know about when I filed this list of witnesses.

**MY LIST OF EXHIBITS:** Here is the list of the documents I want the Judge to look at at my trial.

1. \_\_\_\_\_  
2. \_\_\_\_\_  
3. \_\_\_\_\_  
4. \_\_\_\_\_  
5. \_\_\_\_\_  
6. \_\_\_\_\_  
7. Any and all exhibits listed by the other party.  
8. I reserve the right to add to my list of exhibits if I learn about the existence of an exhibit after I have filed this list of exhibits.

I state under penalty of perjury that the statements and information provided above are true and correct.

**TODAY'S DATE:** \_\_\_\_\_

\_\_\_\_\_  
**Signature of Person Filing Document**

**I promise under oath that I did the following things:**

1. **I gave the Clerk of the Court the ORIGINAL** of my Witness and Exhibit List to file on this date: \_\_\_\_\_ (month, day, and year)  
2. **I gave the Clerk of the Court a copy of my Witness and Exhibit List for the judge.**  
3. **I mailed a COPY** of my Witness and Exhibit List this date: \_\_\_\_\_ (month, day, and year) to the other party or his or her attorney at the following address:

Name of Other Party or his/or her attorney: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

\_\_\_\_\_  
(You must sign here to tell the court that you did these things.)

Name of Person Filing Document: \_\_\_\_\_  
Your Address: \_\_\_\_\_  
Your City, State, Zip Code: \_\_\_\_\_  
Your Telephone Number: \_\_\_\_\_  
ATLAS Number (if applicable): \_\_\_\_\_  
Attorney Bar Number (if applicable): \_\_\_\_\_

**SUPERIOR COURT OF ARIZONA, COCONINO OF COUNTY**

\_\_\_\_\_  
Name of Petitioner/Plaintiff

Case Number: \_\_\_\_\_

**MOTION TO SET AND CERTIFICATE OF  
READINESS**

\_\_\_\_\_  
Name of Respondent/Defendant

Assigned to: \_\_\_\_\_  
Judge's Name

**INFORMATION ABOUT ME:** I am the ☐ Petitioner/Plaintiff or ☐ Respondent/ Defendant in this case.

**INFORMATION ABOUT MY CASE:** You must check one box after each number. The statements must be true before you can check the box and file this document with the court.

1. ☐ **SET MY CASE FOR TRIAL.** By filing this motion, I am asking the Court to set this case for trial.
2. ☐ **WE DO NOT AGREE.** A Petition or Complaint AND an Answer or Response in this case have been filed. The other party and I do not agree and have not been able to settle this case.
3. ☐ **CIVIL CASE:** My case has a "CV" case number. The parties have completed, or will have had a reasonable opportunity to complete discovery within 60 days of the date I file this Motion to Set with the Clerk of the Court. (Discovery is the way you obtain facts and information from the other party. By checking this box and signing this document, I am telling the court that I have obtained all of the facts and information I need from the other party or that this will happen within 60 days from the date I sign this document.)

**OR**

- ☐ **DOMESTIC RELATIONS CASE:** My case has a "DR" case number. The parties have completed, or have had a reasonable opportunity to complete discovery. (Discovery is the way you obtain facts and information from the other party.

By checking this box and signing this document, I am telling the court that I have obtained all of the facts and information I need from the other party.)

4. ☐ **WITNESS AND EXHIBIT LIST.** I have filed my Witness and Exhibit List with the Clerk of the Court, and I mailed a copy to the other party. At least twenty-five (25) days have gone by since the date I mailed my Witness and Exhibit List to the other party.

5. **INFORMATION ABOUT YOU OR YOUR LAWYER:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

6. **INFORMATION ABOUT THE OTHER PARTY OR HIS OR HER LAWYER**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

7. **PREFERENCE FOR TRIAL.** This case ☐ **is not** entitled or ☐ **is** entitled to be heard before other cases. Your case is entitled to be heard before other cases because it is a:

- ☐ Case granted a preference by statute or other rule of court. The citation of the statute or rule is \_\_\_\_\_, OR  
☐ Juvenile Case ("JV" case number), OR  
☐ Criminal Case ("CR" case number), OR  
☐ Domestic Relations Case ("DR" case number), OR  
☐ Probate Case, ("PB" case number), OR  
☐ Short Cause Civil Case, (short case that can be heard in less than one hour) OR  
☐ Hardship Civil Case, OR  
☐ Mental Health Case ("MH" case number).

8. **SHORT CASE.** This case may be heard in less than one hour.  
☐ YES or ☐ NO ☐ NOT SURE

9. **ESTIMATED LENGTH OF TRIAL.** How long will the trial in this case be?  
Estimated length of time: \_\_\_\_\_ ☐ hours or ☐ days

10. **CIVIL CASES ONLY. JURY TRIAL.** My case is a civil case, has a CV number, and I want a jury trial. ☐ YES or ☐ NO (Does not apply to family law cases)

- 11. CIVIL CASES ONLY. ARBITRATION.** The amount of money we are fighting about is approximately \$\_\_\_\_\_. (If the amount of money you are fighting about is less than \$50,000, your case is subject to Arbitration. If the amount of money you are fighting about is more than \$50,000, your case is not subject to Arbitration.) Is your case subject to Arbitration?  
[ ] YES or [ ] NO.

I state under penalty of perjury that the statements and information provided above is true and correct.

TODAY'S DATE: \_\_\_\_\_

\_\_\_\_\_  
Signature of Person Filing Document

I promise under oath that I did the following things:

1. I gave the Clerk of the Court the ORIGINAL of my Motion to Set to file, copies to be conformed to me and the opposing party, and a JUDGE'S COPY on this date:  
\_\_\_\_\_

2. I mailed a COPY of my Motion to Set this date \_\_\_\_\_  
(month, day, and year) to the other party or his or her attorney at the following address:

Name of Other Party or his/or her attorney: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

\_\_\_\_\_  
(You must sign here to tell the court that you did these things.)

### ORDER

Good cause appearing, IT IS HEREBY ORDERED, setting this matter for:

Pre Trial Conference at \_\_\_\_\_ am/pm on \_\_\_\_\_.

Trial at \_\_\_\_\_ am/pm on \_\_\_\_\_  
in Division \_\_\_\_\_ of the Coconino County Superior Court.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Superior Court Judge